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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Re. Appellant: Steven A. Larson
Serial No.: 09/517,974
Filed: March 3, 2000
For: DOOR AND FRAME FOR AIR HANDLING UNIT
Examiner: Gregory J. Strimbu
Art Unit: 3634
Confirmation No.: 5719
Attorney: Gerald E. Helget
Attorney
Docket No.: 33097.3
Additional Fees: Charge to Deposit Account 023732

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPELLANT'S APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Appellant, by his attorney, submits one copy of this Appeal Brief, pursuant to 37 C.F.R. § 41.37 in further of the Appeal, the notice of which was filed with the United States Patent and Trademark Office on February 20, 2006, from the Final Rejection of claims 1-17 and 19-21 of the above-identified application, as set forth in the Final Office Action mailed on October 26, 2005. Appellant respectfully requests consideration and reversal of the Examiner's rejections of the pending claims.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service as First Class Mail, in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

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By *[Signature]*
Date 20 Apr 2006

I. REAL PARTY IN INTEREST

The real party in interest is the assignee, A.J. Manufacturing, Inc..

II. RELATED APPEALS AND INTERFERENCES

Applicant is unaware of any related appeals or interferences that may have a bearing on the Board's decision in the present appeal.

III. STATUS OF CLAIMS

The present application was filed on March 3, 2000 with claims 1-20. Claim 21 was added in a Request for Continued Examination filed July 12, 2004. A non-final Office Action was mailed May 3, 2005. A Final Office Action was mailed October 26, 2005. Claims 1-17 and 19-21 stand twice rejected, remain pending, and are the subject of the present Appeal.

IV. STATUS OF AMENDMENTS

An Amendment after Final Rejection was filed on February 15, 2006 to comply with the Examiner's suggestions regarding claim language.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is a door and frame (10, Fig. 2) in combination with an air handling unit mountable on the roof of a building, the combination comprising a frame (12, Fig. 2, page 4); a hinged door (14, Fig. 2, page 4) engaging the frame, the door comprising a front wall (20, Fig. 5, page 4), a rear wall (22, Fig. 5, page 4), and side walls (24, Fig. 5, page 4) enclosing a hollow core (26, Fig. 5, page 4) and insulating material (28, Fig. 5, page 4) filling the hollow core; and a gasket (16, Fig. 5, page 4) between the door and the frame, the gasket further comprising a flexible gasket wall (16A, Fig. 5, page 4) with anti-roll extensions (16B, Fig. 5, page 4); wherein the door and frame can withstand a pressure differential of greater than six and one-half inches of air pressure .

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-17 and 19-21 were rejected under 35 U.S.C. § 112, second paragraph.

Claim 21 was rejected as anticipated by Gamow under 35 U.S.C. § 102(b).

Claims 1-4 and 8 were rejected obvious under 35 U.S.C. § 103(a) over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow.

Claims 9-11 and 15 were rejected obvious under 35 U.S.C. § 103(a) over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow.

Claims 16, 17, 19, and 20 were rejected obvious under 35 U.S.C. § 103(a) over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Colliander, and Jansen.

Claim 5 was rejected obvious under 35 U.S.C. § 103(a) over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Colliander.

Claims 6 and 7 were rejected obvious under 35 U.S.C. § 103(a) over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Jansen.

Claim 12 was rejected obvious under 35 U.S.C. § 103(a) over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Colliander.

Claims 13 and 14 were rejected obvious under 35 U.S.C. § 103(a) over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Jansen.

VII. ARGUMENT

- A. Claims 1-17 and 19-21 are not unpatentable under 35 U.S.C. § 112, second paragraph.

An Amendment after Final Rejection was submitted, amending the claims as suggested by the Examiner in the Final Office Action.

B. Claim 21 is not anticipated by Gamow.

A single prior art reference anticipates a claimed invention only if it discloses each and every claim element.¹

Gamow does not disclose an air handling unit being adapted for mounting on the roof of a building. Gamow is a portable hypobaric sleeping chamber for acclimatization to high altitude or athletic conditioning. There is no disclosure in Gamow of mounting the portable hypobaric sleeping chamber on the roof of a building. In fact, if Gamow were mounted on the roof of a building, it would no longer be portable.

Claim 21 is therefore allowable.

C. Claims 1-4 and 8 are not unpatentable under 35 USC 103(a) as being obvious over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.² If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.³

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.⁴

Applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness.

¹ *Structural Rubber Prod. Co. v. Park Rubber Co.*, 749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984)

² MPEP Sec. 2142

³ *Id.*

⁴ *Id.* (emphasis supplied)

Gamow is non-analogous prior art.

In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. (citation omitted) Patent examination is necessarily conducted by hindsight, with complete knowledge of the applicant's invention, and the courts have recognized the subjective aspects of determining whether an inventor would be reasonably motivated to go to the field in which the examiner found the reference, in order to solve the problem confronting the inventor. We have reminded ourselves and the PTO that it is necessary to consider "the reality of the circumstances (citation omitted) – in other words common sense -- in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor."⁵

The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness.⁶

Gamow is not in the field of Appellant's invention. Furthermore, common sense would dictate that a person of ordinary skill in the art seeking to solve the problem of a door and frame in combination with an air handling unit mountable on the roof of a building to withstand the pressure differential caused by gale force winds, would not reasonably be expected to look for a solution to his problem in the field of hypobaric body chambers (See Gamow, Field of the Invention). The circumstances are totally different, and such a person would not be reasonably motivated to go to the field of Gamow to solve the problem. A person in the art of the invention in all probability would not even know that such things as hypobaric body chambers exist. Such a person would likely be knowledgeable of building construction, but certainly not of such a highly technical field as the Gamow reference.

Claim 1 is therefore allowable.

Claims 2-4 and 8 are dependent upon allowable claim 1 and are therefore also allowable.

⁵ In re Hans Oetiker, 977 F.2d, 1443, 1447

⁶ Id.

- D. Claims 9-11 and 15 are not unpatentable under 35 USC 103(a) as being obvious over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow.

As discussed above, Gamow is non-analogous art.

Claim 9 is therefore allowable.

Claims 10-11 and 15 are dependent on allowable claim 9 and are also allowable.

- E. Claims 16, 17, 19, and 20 are not unpatentable under 35 USC 103(a) as being obvious over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Colliander and Jansen.

In addition to the fact that Gamow is non-analogous art, Jansen does not disclose opposed thermal pockets in the door and in the frame, the thermal pockets being filled with high-density polyurethane. Jansen only discloses a thermal pocket between the outer wrapper and inner liner of a refrigerator cabinet. There is no disclosure of a thermal pocket in the door.

Claim 16 is therefore allowable.

Claims 17, 19, and 20 are dependent on claim 16 and are therefore also allowable.

- F. Claim 5 is not unpatentable under 35 USC 103(a) as being obvious over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Colliander.

As demonstrated above, Gamow is non-analogous art.

Claim 5 is therefore allowable.

Claim 5 is also allowable in that it is dependent on allowable claim 1.

- G. Claims 6 and 7 are not unpatentable under 35 USC 103(a) as being obvious over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Jansen.

Claims 6 and 7 are allowable in that they are dependent on allowable claim 1.

In addition to the fact that Gamow is non-analogous art, Jansen does not disclose opposed thermal pockets in the door and in the frame, the thermal pockets being filled with a second insulating material. Jansen only discloses a thermal pocket between the outer wrapper and inner liner of a refrigerator cabinet. There is no disclosure of a thermal pocket in the door.

- H. Claim 12 is not unpatentable under 35 USC 103(a) as being obvious over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Colliander.

As illustrated above, Gamow is non-analogous art.

Claim 12 is also allowable in that it is dependent on allowable claim 9.

- I. Claims 13 and 14 are not unpatentable under 35 USC 103(a) as being obvious over admitted prior art in Fig. 1 in view of McDonald, Ryan, and Gamow and further in view of Jansen.

Claims 13 and 14 are allowable in that they are dependent on allowable claim 9.

In addition to the fact that Gamow is non-analogous art, Jansen does not disclose opposed thermal pockets in the door and in the frame, the thermal pockets being filled with a second insulating material. Jansen only discloses a thermal pocket between the outer wrapper and inner liner of a refrigerator cabinet. There is no disclosure of a thermal pocket in the door.

Finally, the Examiner has not applied the test of *Graham v. John Deere Co.*⁷ The MPEP requires the Examiner to do so.⁸ However, the Examiner has made no finding of the level of ordinary skill in the art.⁹

In view of the foregoing, Appellant asks the Board to overturn the Examiner's rejections and allow all claims.

Respectfully submitted,

Dated: 20 Apr 2006

By 

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⁷ 383 U.S. 1 (1966)

⁸ MPEP § 2141

⁹ MPEP § 2141.03

VIII. CLAIMS APPENDIX

The claims on appeal:

1. (rejected) A door and frame in combination with an air handling unit mountable on the roof of a building, the combination comprising:
 - (a) a frame;
 - (b) a hinged door engageable with the frame, the door comprising a front wall, rear wall, and side walls enclosing a hollow core and insulating material filling the hollow core; and
 - (c) a gasket between the door and the frame, the gasket further comprising a flexible gasket wall with anti-roll extensions;wherein the door and frame can withstand a pressure differential of greater than six and one-half inches of air pressure.
2. (rejected) The door and frame combination of claim 1, wherein the insulating material is expanding polyurethane foam.
3. (rejected) The door and frame combination of claim 2, wherein the side walls are two inches in width.
4. (rejected) The door and frame combination of claim 1, wherein the gasket further comprises a central hollow core.
5. (rejected) The door and frame combination of claim 1, wherein the gasket further comprises a friction-reducing material on the gasket wall.
6. (rejected) The door and frame combination of claim 1, further comprising opposed thermal pockets in the door and in the frame, the thermal pockets being filled with a second insulating material.
7. (rejected) The door and frame combination of claim 6, wherein the second insulating material is high-density polyurethane.

8. (rejected) The door and frame combination of claim 1, further comprising a window in the door.

9. (rejected) A door and frame in combination with an air handling unit fixedly mounted on a non-movable edifice, the combination comprising:

(a) a frame;

(b) a hinged door engageable with the frame, the door further comprising a front wall, rear wall, and side walls enclosing a hollow core and insulating material filling the hollow core wherein the insulating material is expanding polyurethane foam; and

(c) a gasket between the door and the frame, the gasket further comprising a flexible gasket wall with anti-roll extensions;

wherein the door and frame can withstand a pressure differential of greater than six inches of air pressure.

10. (rejected) The door and frame combination of claim 9, wherein the side walls are two inches in width.

11. (rejected) The door and frame combination of claim 9, wherein the gasket further comprises a central hollow core.

12. (rejected) The door and frame combination of claim 9, wherein the gasket further comprises a friction-reducing material on the gasket wall.

13. (rejected) The door and frame combination of claim 9, further comprising opposed thermal pockets in the door and in the frame, the thermal pockets being filled with a second insulating material.

14. (rejected) The door and frame combination of claim 13, wherein the second insulating material is high-density polyurethane.

15. (rejected) The door and frame combination of claim 9, further comprising a window in the door.

16. (rejected) A door and frame in combination with an air handling unit fixedly mounted on a fixed structure, the combination comprising:

- (a) a frame;
- (b) a hinged door engageable with the frame, the door further comprising a front wall, rear wall, and side walls enclosing a hollow core and insulating material filling the hollow core; wherein the insulating material is expanding polyurethane foam; and
- (c) a gasket between the door and the frame, the gasket further comprising a flexible gasket wall with anti-roll extensions, and further comprising a friction reducing material on the gasket wall; and
- (d) opposed thermal pockets in the door and in the frame, the thermal pockets being filled with high-density polyurethane.

wherein the door and frame can withstand a pressure differential of greater than eleven inches of air pressure.

17. (rejected) The door and frame combination of claim 16 wherein the gasket further comprises a central hollow core.

18. (canceled)

19. (rejected) The door and frame combination of claim 16, further comprising a window in the door.

20. (rejected) The door and frame combination of claim 16, wherein the side walls are two inches in width.

21. (rejected) A door and frame in combination with an air handling unit for a building having a roof, wherein the door and frame can withstand a pressure differential of greater than six inches of air pressure, the air handling unit being adapted for mounting on the roof of the building.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.



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Attorney
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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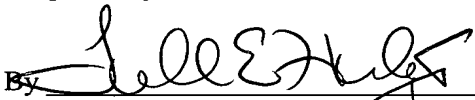
TRANSMITTAL COVER LETTER

Enclosed for filing please find the following:

1. Fee Transmittal for FY 2006 (1 pg.);
2. Applicant's Appeal Brief Under 37 C.F.R. § 41.37 (9 pgs.);
3. A check in the amount of \$250.00; and
4. Postcard receipt.

Respectfully submitted,

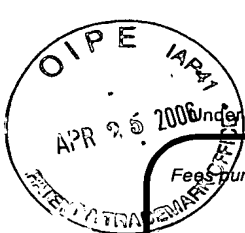
Dated: 20 Apr 06

By 
Gerald E. Helget (Reg. No. 30,948)
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FEE TRANSMITTAL for FY 2006

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

Complete if Known

Application Number	09/517,974
Filing Date	March 3, 2000
First Named Inventor	Steven A. Larson
Examiner Name	Gregory J. Strimbu
Art Unit	3634
Attorney Docket No.	33097.3

METHOD OF PAYMENT (check all that apply)

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☒ Deposit Account Deposit Account Number: 02-3732 Deposit Account Name: Briggs and Morgan, P.A.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description

	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee(\$)	Fee Paid (\$)	Multiple Dependent Claims
_____ -20 or HP= _____	x _____	= _____	_____	_____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee(\$)	Fee Paid (\$)
_____ - 3 or HP= _____	x _____	= _____	_____

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	_____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)
250.00

Other (e.g., late filing surcharge) : Filing a Brief in support of an Appeal

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	30,948	Telephone	612-977-8480
Name (Print/Type)	Gerald E. Helget	Date	April 20, 2006		

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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